

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

LPA No.883 of 2016 (O&M)

Date of Decision:- 01.02.2017

Mohinder Singh & Ors.

...Appellants

VERSUS

The State of Punjab & Anr.

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. Manu K. Bhandari, Advocate for the appellants.

SUDIP AHLUWALIA, J.

This Letters Patent Appeal is directed against the judgment dated 23rd of March 2015 dismissing the CWP No. 5340 of 2015 filed by the present appellants.

2. They had filed the Writ Petition for quashing of the orders dated 13.09.2012 and 04.08.2014 (Annexures P-21 and P-22 respectively) passed by the Principal Secretary to the Government of Punjab, Department of Cultural Affairs (Respondent No. 2), rejecting the claim for regularization of the service, despite a proposal for such regularization vide a communication dated 24.05.2010 (Annexure P-4).

3. Their contention was that they had been appointed as daily wage workers between 1978 to 1988. 43 posts of Malis and Monuments Attendants were to be filled up in terms of a letter dated 02.05.1989. They filed CWP No. 17155 of 1989, which was disposed off on 21.03.1990, with

a direction upon the respondent No. 2 to consider their claim. Meanwhile their services were terminated in the year 1991. The services of their juniors were however regularized, leaving them out of service. They sought information under the RTI Act, and after obtaining the same along with some other similarly placed persons moved a representation before the Department. After consideration the Department through respondent No. 2, sent the proposal dated 24.05.2010 (Annexure P-4) to respondent No. 1. The names of the appellants were included in that communication in which it was also proposed that the daily wagers, who could not be regularized, should be regularized. The proposal was in principle approved vide Memo dated 15.06.2012 (Annexure P-5) with the condition that complete justice should be done to the daily wage workers.

4. Thereafter a joint seniority list was prepared on 20.07.2010, wherefor objections were called for and the final seniority list was circulated vide order dated 20.12.2010 (Annexure P-7). The claim of the appellants was however rejected by the respondent No. 1 vide the impugned order dated 13.09.2012 (Annexure P-21), which had been passed in pursuance to the Order passed by this Court in CWP No. 4937 of 2012 preferred by the present Appellant No. 4 Gurdeep Singh, wherein a direction was issued to decide the Legal Notice dated 16.12.2011 (Annexure P-16). The appellants thereafter issued another Demand for Justice Notice seeking recall of the impugned order dated 13.09.2012 on the basis of certain other information. On the basis of the said information, notice dated 24.01.2014 (Annexure P-21B) was processed, and thereafter the Speaking Order dated 04.08.2014 (Annexure P-22) was passed wherein again their claim was rejected. The appellants therefore filed the CWP No. 883 of 2016

challenging both the rejection orders.

5. The Ld. Single Judge however dismissed the Writ Petition on the ground of inordinate delay inasmuch as the appellants had chosen to remain quiet for almost 20 years after their services had been terminated in 1991. The Appellants being aggrieved with the aforesaid decision have preferred this appeal.

6. It has been urged before us that the Ld. Single Judge was in error in dismissing their Writ Petition ostensibly on the ground of delay. Ld. counsel for the appellants has sought to emphasize before us that the apparent delay in approaching the Court is not an absolute bar for obtaining a deserved relief. In support of this contention, Ld. counsel has placed a decision of the Supreme Court in '**Jagjit Singh Vs. Punjabi University & Ors.' in SLP(C) Nos.15962-15963 of 2013**, decided on 10.3.2015, in which the Apex Court, had rejected the plea/argument of delay attributed to a daily wager employee of the Punjabi University, whose services had initially been terminated, but which termination had been set aside by the Labour Court, after which he was re-employed, and later regularized only after some of his juniors had been so regularized on completion of 5 years on work-charged basis, after their initial appointment as daily wagers, by observing inter alia—

“.....There is no manner of doubt that the immediate provocation for filing a petition for redress of his grievance accrued to the appellant in the year 1992 by which time his juniors had already been placed on work-charged basis and even regularized in service but such delay has not, in our opinion, weighed with the High Court before whom the said grievance was made. Delay and laches, it is fairly well-settled, is no doubt an important consideration that weighs with a writ court in deciding whether or not to grant relief to the petitioner before it. But the same is not an absolute bar if the court is satisfied with the explanation offered for such delay. The

High Court has, it is evident from a reading of the order passed by it in the writ petition as also in the review petition, taken no adverse view based on delay and laches sought to be pressed against the appellant by Mr. Swarup. We therefore see no reason why we should allow that submission advanced before us belatedly to prevail.....”

7. We however find that reliance on the aforesaid decision of the Supreme Court is altogether misplaced *vis-a-vis* the facts and circumstances of the case before us, which are totally distinguishable. The fact of the matter is that in the aforesaid cited case, the services of the appellant in the SLP, who had joined as a daily wager on 19.5.1980, had been terminated on 14.4.1983 before he had been appointed on work-charged basis. He had however, actually challenged the validity of the termination order before the Labour Court, which held the termination to be invalid and directed his reinstatement with continuity of service, but without any back wages on 23.8.1988. He resumed his service shortly thereafter under the University. In the meantime however, four other persons had been appointed on Daily Wage Basis between 1982 and 1986, who were later appointed on work-charged basis on 4.3.1987 and ultimately regularized in the service of the Respondent/University with effect from 1.4.1992, after completing five years on work charged basis, in terms of the University Policy. It was in the backdrop of these facts that the Supreme Court in allowing his SLP had rejected the argument of the Respondents' Advocate that his grievance *'against denial of employment on work-charged basis and subsequent regularization in service had come belatedly inasmuch as any such grievance ought to have been made within a reasonable time of regularization granted to the junior employees in the year 1982'*, and went on to hold that having thus been illegally ousted from employment when his juniors were so appointed on 4.3.1987, he also was actually entitled to such

appointment on or before that particular date since admittedly his termination had been held illegal by the competent Forum.

8. Admittedly the appellants had made out a case of discrimination that their names were not approved for regularization although some of the Daily Wagers, who were junior to them in the year 1991 were so regularized. But it goes without saying that actual engagement in service, whether on a Daily-Wager or *Adhoc* Basis, or in any other temporary format is a *sine qua non* for regularization at any given stage. Obviously any workers who are not so engaged or not in employment at any particular time cannot be considered for regularization as they are not 'employees' at the given time. The only exception to this situation can be an eventuality in which services of the concerned temporary employees are terminated, when such termination itself is illegal, which was exactly the actual situation in the case of '**Jagjit Singh**' (*supra*). But this aspect of the present appellants' termination from service in 1991 being 'illegal' is conspicuously absent in the present case, since no challenge was laid against it. They had never approached the Labour Court nor any other Forum to challenge their orders of termination. Consequently, they were not in actual employment when the matter for regularization of temporary employees/daily wage workers was actually taken up for consideration, and so their names were logically liable to be rejected. It was only 20 years after the termination that their names somehow got included in the Seniority List of 1991 and therefore, they smelt a chance of reabsorption at that belated stage. We need not go into the question as to what all motives and forces might have been at play in the matter of such inclusion of the appellants' names in the Seniority Lists drawn up 20 years after their termination. But it

is seen that in the last paragraph of the Legal Notice dated 24.1.2014 sent to the respondents, the appellants' Advocate has himself mentioned '*It is requested that my clients against whom injustice had been done but who by providence have now again got a chance to get employment under the government, should be taken back in service and regularized.*' Clearly sensing this dubious stroke of 'providence', the appellants appear to have approached this Court with a speculative Writ Petition.

9. The Ld. Single Judge had also rejected the appellants' contention of discrimination against them on the allegation that the Authorities had apparently terminated the services of some other employees in the year 2006, but who were later taken back in service again in 2014, by observing -

“Firstly, there is no discrimination as such qua the petitioners as none of the persons whose services were terminated in the year 1991, had approached the Department by the year 2010 nor anyone of them has been taken back in service or their services regularized. The discrimination, which has been projected by the petitioners' counsel is with reference to the employees whose services were terminated in the year 2006 and had been taken back in service in the year 2014. This speaks for itself as in the case of the petitioners, prior to approaching the Department, there was a lull for around 20 years whereas the position is not the same qua the employees whose services were terminated in the year 2006 and have not been granted the benefit of regularization.”

10. We however, find from the record that there is no mention of these allegations regarding termination of various “employees” in 2006, or their reabsorption/regularization in 2014, in the original list of dates or body of the Writ Petition itself. There is however, a vague and evasive reference to the case of one single employee whose services in this manner had been terminated in 2006, but who was later regularized on 8.8.2014.

The same is contained in Para 42 of the Writ Petition (and Para 32 of the LPA) which is set out below -

“That it is submitted that in a similar case of an employee whose services had been terminated on account of being involved in a criminal case and who was not in service since the year 2006, was ordered to be regularized on 08.08.2014.....”

11. It is noteworthy that in the above paragraph, the name of the concerned employee has not been mentioned nor it has been stated whether or not the criminal case on account of which his services were allegedly terminated in 2006 had itself been concluded by 2014 or not. However, on perusal of relevant order dated 8.8.2014 (Annexure P-23), also referred to in para 42 of the Writ Petition, it is seen that the employee concerned namely Shri Jagsir Singh was shown to be a 'Daily Wager', who was regularized with effect from 27.6.1991 on the post of Mali on Notional Basis, and was posted on a vacant post which had arisen on account of retirement of one Shri Pola Singh, Chowkidar. There is no indication anywhere in the aforesaid order dated 08.08.2014, to the effect that the employee in question was not in service as a daily wager on that date, or that his services had been terminated earlier in 2006 or at any other stage. The appellants have neither chosen to arraign the said employee as a Respondent in the present case, nor have they placed any document on record to show that the services of the said employee were actually terminated in 2006 as alleged, or that he had not been subsequently already taken back into service before his regularization order was passed on 8.8.2014. We may further observe that even assuming the allegations of the appellants in this regard to be true, still there is no scope for this Court to grant them any similar relief, since it is a well settled maxim that no equitable relief can be granted to any

undeserving applicant, merely because such relief had been granted illegally to any one else in the past.

12. For the aforesaid reasons, we find no merit in this appeal, which is therefore, dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

01.02.2017
AS

Whether speaking/reasoned : **Yes/No**

Whether Reportable : **Yes/No**